

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance	• •	Administration	• •	Executive/Legal	• •	Enforcement	• •	Statements of Economic Interest
(916) 322-5662		322-5660		322-5901		322-6441		322-6444

February 14, 1985

Anthony J. Garcia
Garcia, Bruzzone & Galliano
16101 East 14th Street
San Leandro, CA 94578

Re: Your Request for Advice
Our File No. A-85-008

Dear Mr. Garcia:

Thank you for your letter requesting advice on behalf of Union City City Councilmember Jean Westgard regarding her duties under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

Must Councilmember Westgard disqualify herself from participating in decisions regarding a commercial/industrial development because her husband is the local manager of the residential brokerage office of Coldwell-Banker, a real estate company which may serve as a broker in the development? You have stated that the Councilmember's husband works only in residential real estate sales for Coldwell-Banker and would realize no financial gain as a result of Coldwell-Banker's brokerage activities in the commercial/industrial development.

CONCLUSION

Councilmember Westgard must disqualify herself from participating in decisions regarding a commercial/industrial development if it is reasonably foreseeable that the decisions would have a material financial effect on Coldwell-Banker, whether or not the decisions might have a direct effect on her husband's income.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

ANALYSIS

Section 87100 prohibits a public official from making or participating in a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87103 provides that an official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other other interests, any source of income aggregating \$250 or more received by or promised to the public official within 12 months prior to the time when the decision is made.

Councilmember Westgard's husband is the local manager of Coldwell-Banker's residential brokerage office, and he receives income in excess of \$500 per year for these services. Coldwell-Banker is a source of income in excess of \$250 to Councilmember Westgard because she has a community property interest in the income her husband receives. Therefore, Councilmember Westgard would be disqualified from participating in any governmental decision which would have a material financial effect on Coldwell-Banker, whether or not her husband's office is directly affected by the decision.

The Commission's regulations contain monetary guidelines for determining when the financial effect of a governmental decision is material. 2 Cal. Adm. Code Section 18702. When the governmental decision would affect a large business entity, such as Coldwell-Banker, which is a source of income to the public official, the effect of the decision will be considered material if it is reasonably foreseeable that the decision will increase or decrease the business entity's annualized gross revenues by \$100,000 or more. 2 Cal. Adm. Code Section 18702(b) (3) (C).^{2/}

Accordingly, Councilmember Westgard must disqualify herself from participating in decisions regarding a commercial/ industrial development if it is reasonably foreseeable that the

^{2/} This advice focuses on the guidelines for determining a material effect on the annualized gross revenues of a business entity. There are other guidelines for determining a material effect on the net income or current assets or liabilities of a business entity. The Commission is currently considering amendments to these guidelines (see the enclosed copy of notice of proposed action).

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decisions would increase or decrease the annualized gross revenues of Coldwell-Banker by \$100,000 or more, whether or not the decisions might have a direct effect on her husband's income.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure



UNION
CITY

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PLEASE REPLY TO:
GARCIA, BRUZZONE & GALLIANO
A Law Corporation
16101 East 14th Street
San Leandro, CA 94578
(415) 351-6161

January 11, 1985

Legal Division
Fair Political Practices
Commission
1100 K Street
P.O. Box 807
Sacramento, CA 94804

Attention: Barbara Milman
General Counsel

Re: Request For Advise Re: Conflict of Interest

Dear Ms. Milman:

A City Councilwoman has asked us to request your advise on a potential conflict of interest/disqualification problem.

The husband of the Councilwoman is employed as the local manager of the residential brokerage office of Coldwell-Banker, a national real estate company and subsidiary of Sears-Roebuck, Inc. His office handles "traditional" residential re-sale transactions. The commercial division of Coldwell-Banker may serve as a broker in a commercial/industrial development in which the City Council will be called upon to give various approvals. The commercial division and residential resale division are managed separately and the Councilwoman's husband would recognize no financial gain from the activities of the latter.

Should the council member disqualify herself and refrain from participation in any council action regarding this proposed development?

Your advise is much appreciated.

Very truly yours,

ANTHONY J. GARCIA
City Attorney
City of Union City

AJG:dkf